

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHAWN DEREK WEBSTER,

Defendant-Appellant.

UNPUBLISHED

April 29, 2008

No. 273789

Washtenaw Circuit Court

LC No. 04-002156-FH

Before: Wilder, P.J., and Murphy and Meter, JJ.

PER CURIAM.

Defendant pleaded no contest to armed robbery, MCL 750.529, and was sentenced to 51 months to 25 years' imprisonment. He was also ordered to pay state costs, court costs, a crime victim's assessment fee, and attorney fees, all totaling \$1,900, as well as restitution in the amount of \$62. He appeals by delayed leave granted, challenging the trial court's dismissal, without prejudice, of his post-sentencing motion to prohibit the Department of Corrections from deducting payments from his prisoner account to pay for the assessed fees and costs. We affirm.

Although the trial court was mistaken about the statutory basis for defendant's motion, it reached the correct result in denying the motion.¹ "This Court will affirm a lower court's ruling when the court reaches the right result, albeit for the wrong reason." *People v Lyon*, 227 Mich App 599, 612-613; 577 NW2d 124 (1998).

Whether funds could be deducted from defendant's prisoner account to satisfy the assessed fines and costs involves an issue of law. We review questions of law de novo. See *People v Koonce*, 466 Mich 515, 518; 648 NW2d 153 (2002), and *People v Westman*, 262 Mich

¹ Although defendant asserts that the trial court erred by deciding his motion without a hearing, at which any confusion over the statutory basis for the motion could have been clarified, he does not address the merits of this claim of error. An appellant may not merely announce a position and leave it to this Court to discover and rationalize the basis of the claim. *People v Schumacher*, 276 Mich App 165, 178; 740 NW2d 534 (2007). In any event, because the trial court dismissed the motion without prejudice, thereby giving defendant the opportunity to refile his motion and identify the correct statutory basis for the motion, we find no error requiring a reversal or remand.

App 184, 186; 685 NW2d 423 (2004), overruled in part on other grounds in *People v Monaco*, 474 Mich 48 (2006).

Initially, we note that defendant has misconstrued the trial court's October 13, 2005, order as indicative of an intent to rely on MCL 791.220h as authority for the collection of costs and fees from defendant's prisoner account. Viewed in context, the reference to MCL 791.220h was limited to the court-ordered restitution. That statute, which was in effect at the time defendant committed the armed robbery offense in December 2004, authorized the deduction of funds from defendant's prisoner account to pay the restitution obligation.

The trial court's order assessing the fees and costs did not otherwise purport to identify a statutory basis for the withholding of funds from defendant's prisoner account to pay for the assessments. As defendant acknowledges, MCL 769.1l, as added by 2005 PA 325, effective January 1, 2006, authorizes the deduction of funds from a prisoner's account to be used for payment of court-ordered fees and costs. The statute provides:

If a prisoner under the jurisdiction of the department of corrections has been ordered to pay any sum of money as described in section 1k and the department of corrections receives an order from the court on a form prescribed by the state court administrative office, the department of corrections shall deduct 50% of the funds received by the prisoner in a month over \$50.00 and promptly forward a payment to the court as provided in the order when the amount exceeds \$100.00, or the entire amount if the prisoner is paroled, is transferred to community programs, or is discharged on the maximum sentence. The department of corrections shall give an order of restitution under section 20h of the corrections code of 1953, 1953 PA 232, MCL 791.220h, or the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, priority over an order received under this section.^[2]

A defendant's property interest in a prisoner account does not preclude prison officials from deducting funds from the account so long as the defendant is afforded due process. See *Buck v Beard*, 583 Pa 431, 436; 879 A2d 157 (2005), and *Reynolds v Wagner*, 128 F3d 166, 179 (CA 3, 1997). Here, defendant does not claim any due process violation. Instead, he argues that the application of MCL 769.1l to allow the deduction of funds from his prisoner account violates the Ex Post Facto Clauses of the state and federal constitutions, because this statute did not become effective until January 1, 2006, after the underlying crime was committed. We disagree.

Ex post facto laws are prohibited by Const 1963, art 1, § 10, and US Const, art I, § 10. *People v Callon*, 256 Mich App 312, 316-317; 662 NW2d 501 (2003). Michigan's constitutional clause is not interpreted more expansively than its federal counterpart. *Id.* at 317. Both clauses "are designed to secure substantial personal rights against arbitrary and oppressive legislation . . . and to ensure fair notice that conduct is criminal." *Id.*

² Section 1k, MCL 769.1k, lists mandatory and permissive costs and other payments that may be imposed by a sentencing court.

The test for determining whether a criminal law violates the Ex Post Facto Clause of our Constitution, Const 1963, art 1, § 10, involves two elements: (1) whether the law is retrospective, i.e. whether it applies to events that occurred before its enactment, and (2) whether it disadvantages the offender, *People v Davis*, 181 Mich App 354, 357; 448 NW2d 842 (1989). A statute disadvantages an offender if (1) it makes punishable that which was not, (2) it makes an act a more serious offense, (3) it increases a punishment, or (4) it allows the prosecutor to convict on less evidence. *People v Harvey*, 174 Mich App 58, 60; 435 NW2d 456 (1989), quoting *People v Moon*, 125 Mich App 773, 776; 337 NW2d 293 (1983). Further, the Ex Post Facto Clause does not apply to legislative control of remedies and modes of procedure that do not affect matters of substance. *Davis*, *supra* at 358. [*People v Slocum*, 213 Mich App 239, 243; 539 NW2d 572 (1995).]

Contrary to defendant's argument, application of MCL 769.11 does not result in any increase in punishment against defendant. The statute merely facilitates the collection of funds for fees and costs that were previously imposed. Defendant does not challenge the trial court's authority to impose the fees and costs in the first instance. Where a law simply facilitates the collection of sums owed by a defendant at the time of sentencing, it does not constitute an ex post facto law. See *Quarles v Kane*, 482 F3d 1154, 1155 (CA 9, 2007) (statutory amendment that did not increase the amount of restitution, but rather increased the permissible rate for collecting restitution payments, did not violate Ex Post Facto Clause), and *People v Lowe*, 60 P3d 753, 757 (Colo App, 2002) (statute that simply facilitated the collection of sums owed by the defendant at time of sentencing did not constitute ex post facto violation).

Therefore, retroactive application of the collection procedure in MCL 769.11 to defendant's circumstances did not constitute an ex post facto violation. The trial court reached the correct result when it dismissed defendant's motion to stop the collection of funds from his prisoner account.

Affirmed.

/s/ Kurtis T. Wilder
/s/ William B. Murphy
/s/ Patrick M. Meter